

**REGULAR**

**NUMBER: 48.19**

**TITLE: AN ORDINANCE OF THE CITY OF MILPITAS ADDING LANGUAGE TO AND AMENDING SECTIONS OF CHAPTER 200, TITLE V OF THE MILPITAS MUNICIPAL CODE, RELATING TO SOLID WASTE MANAGEMENT**

**HISTORY:** This ordinance was introduced at a meeting of the City Council of the City of Milpitas on April \_\_, 2007, by motion of Councilmember \_\_\_\_\_, and was adopted at a meeting of said Council on \_\_\_\_\_, upon motion of Councilmember \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

**SECTION 1. Addition of Section 1.40 to Title V, Chapter 200.** The following language is added to Title V, Chapter 200, Section 1:

**V-200-1.40 Solid Waste Service Design Requirements**

The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage or handling which will accommodate the solid waste loading anticipated and which will allow for efficient and safe waste removal or collection. The design shall comply with City requirements.

**SECTION 2. Amendment to Section V-200-2.10.** Title V, Chapter 200, Section 2.10 of the Milpitas Municipal Code is hereby amended to add the following definitions:

Agent: The word “agent” means a person, designated by the owner, as responsible for procuring and maintaining solid waste, recyclables and yard trimmings collection services.

Occupant: The word “occupant” means individual(s) occupying any premise, business establishment, industry, or other property for the purpose of residing at that location.

**SECTION 3. Amendment to Section V-200-3.20.** Title V, Chapter 200, Section 3.20 of the Milpitas Municipal Code is hereby amended to read as follows (new language is underlined):

**V-200-3.20 Owner Responsible for Solid Waste, Recyclables, and Yard Trimmings Collection Service**

The owner, agent, and/or occupant of any premises shall subscribe to and pay for solid waste, recyclables, and yard trimmings collection service rendered to such premises by an authorized contractor and shall maintain at a location in accordance with the provisions of this Chapter, a solid waste, recycling and/or yard trimmings container(s), where applicable, in accordance with the provisions of this Chapter.

Without limitation to the provisions of Section V-200-9 of this Chapter, the owner, agent and/or occupant of the premises has an obligation to pay for solid waste, recyclables, and yard trimmings collection services. In the case of those premises receiving service at the single unit service level, as defined in the agreement for the collection and disposal of solid waste between City and Browning-Ferris Industries of California, Inc., dated September 2, 1986 and as amended thereafter, such obligation runs directly to City, and thus the owner, agent, and/or occupant shall be liable to City for solid waste, recyclables, and yard trimmings collection service charges.

**SECTION 4. Amendment to Section V-200-3.30.** Title V, Chapter 200, Section 3.30 of the Milpitas Municipal Code is hereby amended to read as follows (new language is underlined):

**V-200-3.30 Solid Waste Containers Required, Description**

Any and all solid waste produced, kept or accumulated within or upon any premises in the City assigned with curbside service, shall be placed without delay in solid waste containers described in this Section and shall be kept and maintained within such containers and upon

such premises, until the contents thereof are disposed of in accordance with the provisions of this Chapter. Solid waste cans, plastic or polyethylene disposal bags, or authorized contractor supplied or approved containers or solid waste bins shall be authorized solid waste containers for use in the City and shall meet the standards for each such container as established in this Section.

Each container shall:

- (a) Be constructed of metal, plastic or other substantial materials;
- (b) Be of sufficient strength or rigidity to hold without collapse all solid waste deposited and kept therein;
- (c) Be of sufficient strength and rigidity to prevent it from being broken or crushed under ordinary conditions of use;
- (d) Be leak proof and fly proof;
- (e) Be free of sharp, rough or jagged surfaces or edges likely to cause injury to persons lifting or handling the container;
- (f) Have a close-fitting cover.

In addition to the foregoing, containers supplied by the authorized contractor shall be of approximately ninety-six (96), sixty-four (64), or thirty-two (32) gallons in capacity and not weigh more than two hundred (200), one hundred fifty (150), and seventy-five (75) pounds, respectively, when fully loaded.

Containers of thirty-two (32) gallon capacity, whether supplied by the authorized contractor or not, shall, in addition to the requirements of (a) through (f) above:

(1) Be equipped with two attached handles or bales, one on each side of the container, of sufficient strength and size and so located to facilitate the lifting and handling of the container; and

(2) Be of such shape that it can be lifted and handled without unreasonable strain by one person; and

(3) Not weigh more than seventy-five (75) pounds when fully loaded. Plastic or polyethylene disposal bags with wire or plastic tie closure shall meet the requirements of paragraphs (a) through (e) of this subsection, and the National Sanitation Foundation standards for polyethylene refuse disposal bags as follows:

(1) Dimensions. The bags shall have a minimum circumference of sixty (60) inches and a minimum inner dimension of thirty-seven (37) inches.

(2) Strength. The bags, exclusive of packaging and ties, shall have a minimum weight of one hundred five (105) pounds per one thousand (1,000) bags.

Authorized contractor supplied or approved solid waste bins with a capacity in excess of ninety (90) gallons and dimensions providing not less than one (1) cubic yard capacity shall meet the requirements of paragraphs (a) through (f) of this subsection.

(g) Graffiti-free.

Containers supplied by the authorized contractor must:

- 1) Be maintained by the same at a minimum level of good condition.
- 2) Include identification as the property of the authorized contractor that includes a serial number, instruction for use and telephone number of the authorized contractor.

**SECTION 5. Amendments to Section V-200-3.40.** Title V, Chapter 200, Section 3.40 is hereby amended by the deletion of the language detailed below such that it shall read as follows:

**V-200-3.40 Weekly Disposal**

**No more than one week's accumulation of solid waste shall be kept or be permitted to remain upon any premises in the City. At least once each week all solid waste produced, kept or accumulated within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.**

**SECTION 6. Amendments to Section V-200-4.20.** Title V, Chapter 200, Section 4.20 shall be amended to read as follows (new language is underlined):

**V-200-4.20 Delivery to the Authorized Contractor**

Solid waste, recyclables, and/or yard trimmings are to be delivered to an authorized contractor authorized to collect, dispose, and/or recycle same. The authorized contractor shall provide additional services as necessary to accommodate the needs of disabled residents, as defined in the Americans with Disabilities Act (ADA), at the same level of service provided and rate charged to nondisabled residents, including, but not limited to, collecting Solid Waste, Recyclables and Yard Trimmings from containers stored in side or back yards, replacing empty containers in side or back yards and maintaining a TDD telephone line.

The authorized contractor shall not be required to enter upon a private driveway or upon a private yard or enclosure for the purpose of collecting solid waste, recyclables, or yard trimmings, except to accommodate disabled residents as defined by the ADA.

Solid waste or recyclables accumulated in containers at residential premises shall be delivered to the authorized contractor by placing the container(s) alongside the street curb (but off the roadway) in front of the premises wherein solid waste and/or recyclables are produced and accumulated. In the event any Producer fails to return containers to their approved locations in a timely manner, Producer may be cited. After two citations within one year, the City may require the Producer to contract for a minimum of 12 months subscription to push and return services as provided by authorized contractor.

Yard trimmings and shall be delivered to an authorized contractor in an authorized yard trimmings container by placing the cart in the roadway with the wheels adjacent to the curb. Tree prunings and branches shall be bundled with twine and cut in lengths no longer than five (5) feet long. Bundles shall be placed on the ground adjacent to the yard trimmings container. Excess yard trimmings shall be placed in a clean thirty-two (32) gallon solid waste container provided by the resident.

Solid waste or recyclables accumulated in containers of thirty-two (32) gallons or larger capacity shall be delivered to the authorized contractor in a location on private property, consistent with the provisions of Section V-200-3.31, so as not to require the driver of the collection vehicle to dismount from the vehicle in order to service the bins. In the event that the driver is required to dismount due to the location of the bin, travel more than twenty-five (25) feet to the recycling bin, or because the producer does not want the collection vehicle on the producer's property, or if site conditions require the use of a scout truck, the producer shall be

liable to the authorized contractor for an additional charge (called a "push and return charge") for pushing, collecting and returning the bin(s). This charge shall so apply if the contractor must use non-standard equipment (scout truck).

The authorized contractor shall not be liable for any damage to private property in the course of collecting solid waste, recyclables, or yard trimmings or for delivery, maintenance, or removal of any container or debris box, except for the negligence of the authorized contractor, its agents, servants and employees.

**SECTION 7. Amendments to Chapter V-200-5.11.** Title V, Chapter 200, Section 5.11 shall be amended in its entirety to read as follows:

**V-200-5.11 Contract Provisions**

Each authorized contractor(s) providing residential, commercial, or industrial solid waste collection services shall comply with all licenses, permits, or written approval requirements of the City. Such written approval shall be contingent upon the authorized contractor's demonstrated capability to comply with these standards and use of equipment which is safe and sanitary.

Any contract executed hereunder may provide that the authorized contractor(s) shall have the right to collect and receive the collection charges and fees established therein for the collection, transportation, removal, processing or disposal of solid waste, recyclables, and/or yard trimmings; provided, however, City may elect to collect and receive said collection charges and fees subject to the contract provisions concerning the remittance thereof to the authorized contractor. Said contract shall also provide for the compensation to be paid to City by the authorized contractor for the granting of the right to engage in said business. Nothing herein contained shall be deemed to limit the authority of the City to renew or extend a contract upon the expiration of any term thereof. The contract may contain such other terms, covenants and conditions as the City shall deem necessary or convenient for the efficient collection, transportation, removal, processing or disposal of solid waste, recyclables, and/or yard trimmings and the preservation and protection of the public health, safety, peace and welfare.

**SECTION 8. Amendments to Chapter V-200-5.50.** Title V, Chapter 200, Section 5.50 shall be amended to read as follows (new language is underlined):

**V-200-5.50 Faithful Performance Bond**

**When the City authorizes or designates a person or firm to provide solid waste collection services for its jurisdiction through contract, franchise, permit, or license such person or firm shall submit proof of adequate financial resources and experience to properly conduct the operation authorized.**

Each and every authorized contractor shall, at the time of execution of the contract or issuance of the permit authorizing authorized contractor to engage in business, furnish to City and file with the City Clerk a corporate surety bond in a penal sum required by the City (and approved as to form by the City Attorney), executed by the authorized contractor as principal and by a corporate surety as surety, conditioned upon the faithful performance by the authorized contractor and any authorized subcontractor(s) of said contract and of all provisions of this Chapter.

**SECTION 9. EFFECTIVE DATE; PUBLICATION.** Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the City Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.



## EXHIBIT

California  
Public Employees' Retirement System

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# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Milpitas

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The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1962, and witnessed June 15, 1962, and as amended effective March 1, 1963, April 1, 1973, September 28, 1973, January 1, 1974, July 1, 1976, July 1, 1980, May 13, 1984, May 21, 1989, April 22, 1990, July 6, 1990, October 4, 1992, September 17, 1993, December 6, 1996, May 8, 1998, July 18, 1999, July 16, 2000, June 2, 2002, October 6, 2002 and October 15, 2006 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective October 15, 2006, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
  - 1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

PLEASE DO NOT SIGN "EXHIBIT"

2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1962 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).
4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

#### **NO ADDITIONAL EXCLUSIONS**

5. Public Agency and the Milpitas Fire Protection District have agreed to a merger of their contracts, and this contract shall be a continuation of the benefits of the contract of the Milpitas Fire Protection District, pursuant to Section 20567.5 of the Government Code. Such merger is effective as of July 1, 1962. Legislation repealed said Section effective January 1, 1988.
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after June 2, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1972, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after June 2, 2002 shall be determined in accordance with Section 21354.5 of said Retirement Law, subject to the reduction provided therein for service prior to December 31, 1972, termination of Social Security, for members whose service has been included in Federal Social Security (2.7% at age 55 Full and Modified).



PLEASE DO NOT SIGN "EXHIBIT ONE"

8. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
9. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local miscellaneous members and local fire members only.
  - b. Section 20425 ("Local Police Officer" shall include employees of a police department who were employed to perform identification or communication duties on August 4, 1972 and who elected to be local safety members).
  - c. Section 20042 (One-Year Final Compensation).
  - d. Section 20965 (Credit for Unused Sick Leave).
  - e. Section 21024 (Military Service Credit as Public Service).
  - f. Section 20434 ("Local Fire Fighter" shall include any officer or employee of a fire department employed to perform firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation services as described in Government Code Section 20434).
  - g. Section 20903 (Two Years Additional Service Credit).
  - h. Section 21427 (Improved Nonindustrial Disability Allowance) for local police members only.
  - i. Section 21548 (Pre-Retirement Optional Settlement 2 Death Benefit) for local police members only.
  - j. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local police members only.
  - k. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).

PLEASE DO NOT SIGN "EXHIBIT C"

10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on July 1, 1976. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
12. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local fire members.
  - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local police members.
  - c. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
  - d. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF MILPITAS

BY \_\_\_\_\_  
LORI MCGARTLAND, CHIEF  
EMPLOYER SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk